In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 31, Original

STATE OF UTAH, PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

ON BILL OF COMPLAINT

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

In previous memoranda, the United States asserted that the present applicants for intervention, Morton International, Inc. and Great Salt Lake Minerals & Chemicals Corporation, and other private landowners similarly situated, were indispensable parties to this litigation. The reason for that submission was that these landowners are claiming lands also claimed to have been owned by the United States prior to its conveyance to the State of Utah on June 15, 1967, and that, under Public Law 89-441, the State is bound to pay only for lands which are adjudicated to have belonged to the United States at the time of the

conveyance. Thus, it seemed necessary to determine whether the United States or the private claimant was the true owner of these contested lands—primarily the uncovered lands claimed by the United States under the so-called "*Basart* doctrine" and, also, if the United States should assert a claim thereto, the presently submerged lands underlying the Great Salt Lakes (together with the brines and minerals in solution) adjacent to upland patented to private persons.

It now appears, however, that the State of Utah is agreeable to so limiting the issues as to make unnecessary any determination as to who, if not the State, is the true owner of the lands claimed (or potentially claimed) both by the United States and private landowners. As the attached stipulation makes explicit, the State is prepared to end the litigation and bind itself to pay the United States with respect to any lands as to which it is unable to establish its own superior title without any adjudication as to whether the United States is the true owner thereof. The net effect is that there need be no adjudication whatever with respect to the *Basart* lands, nor any determination with respect to the presently submerged lands or brines or minerals in solution of the Lake (if the United States asserts a claim thereto) except only whether Utah's title is superior to that of the United States.

Although the State was, in our view, entitled to press the litigation further, we can appreciate no reason why it may not limit its case in this way—especially since the practical effect of the suit is merely to determine what lands the State must pay

for and since it was always free to pay without any litigation.

Given the present narrow scope of the suit and the protective provisions of the attached stipulation, we believe the applicants for intervention (and others similarly situated) are no longer indispensable parties. Although we adhere to the view that their participation as parties would not defeat the Court's jurisdiction, we submit that this question can properly be avoided by denying their motions to intervene.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

MARCH 1968.

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STIPULATION

The State of Utah and the United States agree and stipulate as follows:

1. Notwithstanding anything to the contrary in the Complaint filed herein by the State of Utah or the Answer filed by the United States, the only objective of the present suit is to determine whether, as against the United States, the State held title to the lands, brines and minerals below the meander line of the Great Salt Lake which the United States claims to have owned and conveyed to the State on June 15, 1967, with a view to later determining the compensation, if any, due by the State to the United States on account of that conveyance under Public Law 89-441.

2. The presently uncovered lands which the United States claims to have owned and conveyed to the State on June 15, 1967, are correctly shown on the attached map, and comprise approximately 325,574 acres indicated as "public domain reliction" and approximately 108,780 acres indicated as "public land reliction under *Basart*." In addition, the United States reserves the right to assert that it owned and conveyed to the State on June 15, 1967, all the brines and minerals in solution in the brines of the Great Salt Lake and all of the presently submerged lands underlying the Lake, and the State reserves the right to contest the propriety of asserting such a claim in this litigation.

3. Should the United States assert that prior to June 15, 1967, it owned the brines and minerals in solution in the brines of the Great Salt Lake and the presently submerged lands underlying the Lake, and should the State fail to establish its own superior title as against the United States to these brines, minerals and submerged lands, the State, without further contest in this or any other proceeding, shall acknowledge the title of the United States prior to the conveyance of June 15, 1967, to all the lands (uncovered and submerged) and brines and minerals described in paragraph 2 and shall be bound to pay the United States the fair value of all such lands, brines and minerals in accordance with Public Law 89-441, or the conveyance thereof shall be null.

4. Should the State establish its own superior title as against the United States to the brines and min-

erals in solution in the brines of the Great Salt Lake and the presently submerged lands of the Lake, but fail to establish its own superior title as against the United States to the uncovered lands indicated on the attached map as "public domain reliction lands," the State, without further contest in this or any other proceeding, shall acknowledge the title of the United States prior to the conveyance of June 15, 1967, to all the uncovered lands described in paragraph 2 (including those designated as "public domain reliction" and those designated as "public land reliction under *Basart*" on the attached map) and shall be bound to pay the United States the fair value of all such uncovered lands in accordance with Public Law 89-441, or the conveyance thereof shall be null.

5. Should the State establish its own superior title as against the United States to the uncovered lands indicated on the attached map as "public domain reliction lands," the United States, without further contest in this or any other proceeding, shall abandon any claim as against the State to ownership prior to June 15, 1967, of the uncovered lands indicated on the attached map as "public land reliction under *Basart*," and shall acknowledge that the State owes nothing to the United States on account of the conveyance of such lands under Public Law 89-441.

6. In no event shall the judgment herein be taken as adjudicating or affecting the title of persons or corporations claiming lands (uncovered or submerged), brines or minerals below the meander line of the Great Salt Lake, whether those which the United States claims to have owned prior to June 15,

1967, or others; nor shall the conveyance of June 15, 1967, from the United States to the State or any subsequent payment by the State to the United States affect the validity of such claims.

7. Neither this stipulation nor the judgment herein shall affect title to the minerals reserved to the United States by Section 3 of Public Law 89-441 and excepted from the conveyance of June 15, 1967, executed pursuant thereto.

8. The State expressly waives any claim to the return of any payment made to the United States pursuant to Public Law 89-441 for lands (uncovered or submerged), brines or minerals conveyed to the State on June 15, 1967, should it be determined in subsequent proceedings that such lands, brines or minerals were owned by others and not the United States; and although the State and the United States believe that any payment so made will be the property of the United States and will not be subject to any claim by any other person, the State agrees to indemnify the United States should it be adjudicated to be liable to any claimant with respect to any such payment on the ground that the United States was not the true owner of such lands, brines or minerals on the date of the conveyance.

9. This stipulation is for the purpose of identifying, clarifying and limiting the scope of the present litigation and any judgment or decree entered herein, and shall not be construed to alter the burden of proof or the burden of proceeding with the evidence other-

wise attributable to either party in asserting its respective claims and defenses against the other.

PHIL L. HANSEN,
Attorney General,
State of Utah.

ERWIN N. GRISWOLD,
Solicitor General,
United States of America.

MARCH 1968.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1968 295791 697

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